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C O N F I D E N T I A L SECTION 01 OF 03 MOSCOW 003120

SIPDIS

E.O. 12958: DECL: 11/18/2019
TAGS: [PREL](#) [PGOV](#) [MARR](#) [EAIR](#) [RS](#) [AF](#)
SUBJECT: AFGHAN LETHAL TRANSIT TALKS STALL OVER ICAO
STANDARDS

Classified By: Acting Deputy Chief of Mission Susan M. Elliott for reasons 1.4 (b) and (d).

¶1. (C) Summary: In a November 17 meeting that lasted longer than three hours, MFA North America Deputy Director Nikolay Sofinskiy noted that the transit of lethal goods over Russia to Afghanistan had the full support of POTUS and Medvedev. The GOR and USG now had to work out the modalities to make these flights occur regularly. The GOR said the second transit flight request was more complete than the first flight request, but still lacked information regarding the packaging of the cargo, which, GOR noted, is important information. In addition, the GOR indicated that if the United States wanted to ship goods prohibited under ICAO rules, then competent U.S. authorities must authorize the flight. The USG replied that the main problem with the first transit flight was a dispute over ICAO standards, which do not apply to state aircraft, including military aircraft. Further, flights carrying certain types of military cargo, such as munitions and fuel, could not use ICAO standards because they either prohibit or restrict transport of hazardous materials. The United States ships cargo according to its own guidelines, which are consistent with ICAO standards, and adapted as necessary, for the transport of hazardous cargo for military purposes. The GOR wanted the United States to show how USG guidelines corresponded to internationally recognized ICAO standards for each item shipped, something that Air Force Materiel Command (AFMC) indicated is not possible due to the significant time and labor involved. Both sides agreed to exchange nonpapers proposing a way ahead by November 24. In the meantime, the GOR will continue to process USG flight requests on a case-by-case basis. The United States also said it plans to conduct about 20 to 25 flights by the end of the year. The GOR said they would start receiving our requests via email, and that flights may take place along any internationally recognized route. The GOR also criticized a November 14 New York Times article on Afghanistan air transit flights. End summary.

Our Presidents Want Lethal Transit

¶2. (C) MFA North America Deputy Director Nikolay Sofinskiy opened the November 17 session by reiterating that the transit of lethal military equipment over the Russian Federation to Afghanistan had the full support of POTUS and Medvedev. Because all political decisions regarding this matter had already been made, the meeting was to "discuss and agree on technical procedures" and modalities to implement the Afghanistan Air Transit Agreement, he said. He added

that the MFA's role was simply to coordinate this meeting of technical experts. "The MFA knows nothing," he said. Sofinskiy also posited that the agreement had already been provisionally implemented and legislative ratification would come later.

ICAO Standards For All!

13. (C) OSD Russia Country Director Michael Barnes said the clearance request for the second Afghanistan air transit flight (which took place November 18) was approved in a smoother fashion than the request for the first flight (which took place October 8), and added that the methods used to obtain the second flight clearance should become the standard. Head Specialist-Expert of the Aviation Transit Section of Rosaviatsya's Department of Air Transit Dmitriy Mirko said that the request submitted for the second transit flight was more complete than that for the first flight. Lacking in the request for the second flight, however, was information regarding a "packaging instruction paragraph" for the cargo. Mirko argued, "Full information about the cargo should include packaging instructions," and would have helped determine how hazardous the cargo was. He added that Annex 18 of the International Convention on Civil Aviation (the "Chicago Convention") (which, together with its Technical Instructions established ICAO standards for the transport by air of dangerous goods) stipulated the safety requirements for shipping hazardous cargo. ICAO standards are internationally recognized, he said. "If the packaging was

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up to standard, the flight request should have reflected this," Mirko argued. He also said the GOR would like flight requests to include the net weight of each item to be shipped.

14. (C) Mirko said that if the United States wanted to ship something prohibited under ICAO standards, then the competent U.S. authority should give permission to do so. For milair flights, a military authority should provide this permission. He added that military and civilian shipping standards should agree.

15. (C) Barnes said that the main problem with the first flight clearance was a dispute over whether the cargo was shipped according to ICAO standards, and further that the permission Mirko mentioned was contained in Air Force Manual (AFMAN) 24-204. DoD Legal Counsel Derek Gilman then indicated that the Chicago Convention and ICAO standards do not apply to state aircraft. He said the Afghanistan Air Transit Agreement said that shipments would be made "consistent with," rather than "in accordance with" ICAO standards. Military flights could not possibly follow ICAO standards because under those standards the quantity of hazardous articles that can be shipped is too small to support military operations. "We cannot keep our troops supplied if we can only send one gallon of gasoline on a flight," AFMC representative Michael Wernecke said. The U.S. military, Barnes posited, had strict standards for shipping dangerous articles. These standards were spelled out in AFMAN 24-204. He added that the U.S. Department of Transportation confirmed that AFMAN 24-204 standards are consistent with ICAO standards for safety. If articles are shipped improperly, it is a criminal offense, Barnes said. In addition, a plane can be permitted to fly only if it follows the guidelines in AFMAN 24-204.

16. (C) Mirko agreed that Chicago Convention Article 3 provided that the Convention (and hence ICAO standards) did not apply to state aircraft, but he pointed out that Article 3 paragraph c) provided that no state aircraft can fly over the territory of another state without all parties agreeing. Article 8 of the Afghanistan Air Transit Agreement, he added, said that flights over Russian territory should be carried

out according to Russian law and ICAO standards. He said that Russian civilian airports might be used if a flight faced an emergency, and so ICAO standards should be used so that first responders would know how to deal with the situation. The GOR delegation did not raise Article 8 again in the negotiations. The USG view, based upon the negotiation of Article 8 earlier this year, is that reference to ICAO in Article 8 does not pertain to cargo, but rather to flight.

¶17. (C) Mirko said that Rosaviatsya needed to see confirmation that AFMAN 24-204 and ICAO standards conform. When Gilman offered to provide a letter stating this and Acting DATT offered to include language in each flight request reiterating this, Mirko replied that he would need to see how AFMAN 24-204 safety codes for each item to be shipped conform to ICAO codes for that same item. Nobody at Rosaviatsya was familiar with AFMAN 24-204, he said, and so his colleagues would not understand its code system. When Barnes offered to pass a copy of AFMAN 24-204, Sofinskiy said that it was too cumbersome and nobody would have time to read it. He added the GOR does not doubt that the USG ships goods safely.

¶18. (C) Wernecke replied that it would not be possible to show how AFMAN 24-204 codes correspond to ICAO codes using established procedures, manuals, and software. The military does not use ICAO codes at all, and so conforming the two systems for each flight would have to be done manually. Personnel would also need to be trained to use ICAO standards. U.S. Transportation Command (TRANSCOM) operates about 1,000 flights per day, and so too much time would have to be devoted to the few Russian flights that take place to make this practical. In addition, doing so would invite human error as personnel try to assign ICAO codes to cargo that would be prohibited under ICAO standards.

¶19. (C) Seeing that the meeting was deadlocked, Barnes read the title of the Afghanistan Air Transit Agreement and reminded the GOR representatives that the intent of the Agreement was to permit the transport of hazardous cargo

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across Russia. At that point, Sofinskiy called for a recess to consult with FM Lavrov. When he returned he said that things were still at an impasse and "further discussion made no sense." He proposed that each side draft a nonpaper with its proposals for a way ahead. Sofinskiy and Barnes agreed that the nonpapers would be exchanged by November 24. "It will be difficult to reach an agreement, but we shall try," he opined. Sofinskiy said that, in the meantime, the GOR would continue to process flight requests on a case-by-case basis.

U.S. Plans About Five Flights Per Week

¶10. (C) When asked, Barnes said the USG would like to conduct about five flights per week, for a total of about 20 to 25 flights before the end of the year. If POTUS decides to send more troops to Afghanistan, he posited, the U.S. would like the option of sending more flights over Afghanistan. Barnes added that these flights will include both military and commercial contract flights. When Sofinskiy said that the GOR had concluded a similar agreement with NATO in April 2009 and not one NATO flight had transited Russia, Barnes said "the U.S. is different," arguing that the USG would like to "use the agreement more."

¶11. (C) In order to send such a volume of flights over Russia, Barnes said that the U.S. would like to send flight clearance requests to Russia via electronic mail. The current system of communicating by fax was "cumbersome," he argued. Sofinskiy replied, "We have no problem with that." The GOR would set up a separate electronic mail account once the volume of flight requests increases, he said.

Quo Vadis?

¶12. (C) When asked whence the majority of transit flights would originate, Barnes said that most military flights would come from Europe, although the most savings would be obtained by sending planes over the North Pole. The USG, he added, was currently working on entry and exit routes with Kazakhstan to take advantage of the polar route. Commercial contract flights, Barnes said, could originate from anywhere.

Manager of the Europe and America Section of RosAeroNavigatsiya's International Cooperation Bureau Natalya Kirillova indicated this was fine as long as the aircraft followed internationally approved routes. When asked, she said that current USG plans did indeed call for the planes to follow such routes.

The Hazards of Press Freedom

¶13. (C) Sofinskiy said that a November 14 New York Times article which stated the GOR "insisted on charging air navigation fees that the Kremlin had said would be waived" had nothing to do with reality. He said the GOR had made no demands of the United States to pay air navigation fees related to the transit of lethal cargo to Afghanistan. He said that about 10 different GOR entities were involved in the implementation of this agreement, and unfortunately delays in agreement on how to collect air navigation fees from GOR entities had not yet been reached. "We hope to work out our internal issues by mid-December," Sofinskiy stated. When Barnes told Sofinskiy that attempts had been made by USG officials to point out the inaccuracies in the story to the journalist, but the article was published anyway, Sofinskiy replied, "It is sometimes good to control the press."
Rubin